



**Onyiego v Robinson Security Limited (Cause 21 of 2016)
[2023] KEELRC 2307 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2307 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 21 OF 2016
DN NDERITU, J
SEPTEMBER 28, 2023**

BETWEEN

RICHARD ONYIEGO CLAIMANT

AND

ROBINSON SECURITY LIMITED RESPONDENT

RULING

I. INTRODUCTION

1. The Claimant filed this cause on 29th January, 2016 seeking various orders as per the memorandum of claim. The Respondent entered appearance on 10th March, 2016 and filed a reply to the claim on 12th July, 2016.
2. After a prolonged period of dormancy in the matter, on 13th February, 2019 Mr. Maragia for the Claimant wrote to court proposing that the matter could be settled by way of mediation and the matter was accordingly referred to mediation and a mediator appointed vide a notice dated 18th February, 2019.
3. However, the matter was not resolved through mediation as intimated and on 28th March, 2022 the matter was returned to court for purposes of hearing and disposal. The record indicates that the mediator failed to communicate with the court within the timelines set and as such the matter had overstayed without resolution.
4. On 31st October, 2022 the court issued a notice to show-cause (NTSC) why the cause should not be dismissed for want of prosecution and the same was set for hearing on 16th November, 2022 when the Claimant was directed to file and serve an affidavit in response to the NTSC and the hearing of the same stood over to 14th December, 2022.
5. Subsequently, the Claimant filed an affidavit in opposition to the NTSC sworn by the Claimant on 14th November, 2022 and the Respondent filed an affidavit in support of the NTSC sworn by Agnes



Rutinu, the director of the Respondent, sworn on 13th December, 2022. The Claimant filed a further affidavit sworn on 21st December, 2018 (sic!).

6. Mr. Maragia and Mr. Githiru for the Claimant and the Respondent respectively consented that the ruling be delivered based on the affidavits filed by the parties.

II. DETERMINATION

7. It is regretted that this ruling has taken long as this file somehow mixed up with others and could not be traced on time for the ruling.
8. The record shows that mediation was deemed to have failed to yield any results on 28th March, 2022 and it is then that the matter was directed to proceed to hearing in court. The NTSC was issued on 31st October, 2022 which is hardly one year from the date of the order on hearing alluded to above.
9. Rule 16 of the Employment and Labour Relations Court Rules (the Rules) provides that a matter may not be dismissed for want of prosecution within one year from the date of the last action towards prosecuting the same. Clearly, the NTSC issued by the court as above was issued in error and ought not to have gone out to the parties.
10. On the above ground alone, it is the finding of this court that the NTSC was issued in error and the same is hereby set aside. The court has gone through the affidavits by the parties but the contents therein are subservient to the law cited above.

III. ORDERS

- a) The NTSC issued by the court on 31st October, 2022 be and is hereby set aside.
- b) The cause shall proceed to hearing and determination in court on priority basis.
- c) There is no order as to costs.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 28TH DAY OF SEPTEMBER, 2023.

DAVID NDERITU

JUDGE

